



Order Filed on September 1, 2020
by Clerk
U.S. Bankruptcy Court
District of New Jersey

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.
Stuart Komrower, Esq.
Ryan T. Jareck, Esq.
Matteo W. Percontino, Esq.
Court Plaza North
25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
Facsimile: (201) 489-1536

*Attorneys for Debtors
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

RTW RETAILWINDS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 20-18445 (JKS)

(Jointly Administered)

**STIPULATION AND CONSENT ORDER GRANTING LIMITED RELIEF FROM THE
AUTOMATIC STAY WITH RESPECT TO PERSONAL INJURY CLAIM ASSERTED
BY LASHONDA BAILEY**

The relief set forth on the following pages, numbered two (2) through eight (8), is hereby
ORDERED.

**DATED: September 1,
2020**



Honorable John K. Sherwood
United States Bankruptcy Court

¹ The Debtors in these chapter 11 cases and applicable, are as follows: RTW Retailwinds, Inc. (1445); Lerner New York Holding, Inc. (2460); Lernco, Inc. (4787); Lerner New York, Inc. (2137); New York & Company, Inc. (4569); Lerner New York GC, LLC (6095); Lerner New York Outlet, LLC (6617); New York & Company Stores, Inc. (6483); FTF GC, LLC (7341); Lerner New York FTF, LLC (6279); Fashion to Figure, LLC (6997); FTF IP Company, Inc. (6936). The Debtors' principal place of business is 330 W. 34th St., 9th Floor, New York, New York 10001.

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This Stipulation and Consent Order (the “**Stipulation**”) is made by and between Lashonda Bailey (the “**Claimant**”) and RTW Retailwinds, Inc. and its subsidiaries, as debtors and debtors in possession (the “**Debtors**,” and together with the Claimant, the “**Parties**”) by and through their respective duly authorized undersigned counsel.

INTRODUCTION

WHEREAS, on July 13, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of New Jersey (the “**Court**”);

WHEREAS, the Debtors’ chapter 11 cases (the “**Chapter 11 Cases**”) have been procedurally consolidated;

WHEREAS, since the Petition Date, the Debtors have remained in possession of their assets and are authorized to and are continuing to operate and manage their business as debtors in possession;

WHEREAS, before the Petition Date, on or about May 12, 2019, Lashonda Bailey (the “**Claimant**”) alleges to have suffered a personal injury at a New York & Company location located at Broward Mall resulting in a potential claim against the Debtors (the “**Potential Claim**”).

WHEREAS, the Debtors deny any and all liability with respect to, and contest the merits of the Potential Claim;

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WHEREAS, the Claimant wishes to pursue potential recovery for the Potential Claim from certain insurance policies maintained by the Debtors (the “**Insurance Policies**”), subject to the limits and terms and conditions of such Insurance Policies.

WHEREAS, the Claimant seeks and the Debtors are willing to consent to, a limited modification to the automatic stay of section 362 of the Bankruptcy Code, subject solely to the terms and conditions set forth in this Stipulation;

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE PARTIES HERETO ACKNOWLEDGE RECEIVING, IT IS HEREBY STIPULATED, AGREED AND ORDERED AS FOLLOWS:

1. The recitals set forth above are hereby made an integral part of the Parties’ Stipulation and are incorporated herein.
2. This Stipulation is subject to and conditioned upon the entry of a final, non-appealable order of the Court approving this Stipulation (the “**Stipulation Effective Date**”). In the event that the Stipulation Effective Date does not occur, this Stipulation shall be deemed null and void and of no force or effect. In such event, nothing (including the Recitals) contained in this Stipulation, any application or certification filed seeking an order from the Court approving this Stipulation, or any correspondence or other communications related to the negotiations, drafting or approval of this Stipulation, shall be argued or deemed to be an admission against any

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Party's interest in any litigation by and between any parties, and the Parties shall be automatically returned to their respective positions status quo ante.

3. Upon the Stipulation Effective Date, the automatic stay shall be modified solely to permit the Claimant to continue to pursue coverage and a recovery under the Insurance Policies in connection with the Potential Claim; provided, however, that, with respect to any settlement or judgment against the Debtors in connection with the Potential Claim, the Claimant shall be limited by, and shall look strictly and solely to, the proceeds of the Insurance Policies, if any. Neither the Claimant nor any of the Claimant's agents, attorneys or representatives take any action or attempt to cause any action to be taken to collect all or any portion of any settlement or judgment obtained on account of or in connection with the Potential Claim from the Debtors and/or the properties and assets of any of the Debtors' estates.

4. The Claimant waives the ability to recover on any and all claims that she has or may have against the Debtors or their estates arising out of, related to, or in connection with, the Potential Claim, other than from the Insurance Policies.

5. Upon the Stipulation Effective Date, the Claimant shall have waived the ability to file a proof of claim in the Chapter 11 Cases and/or seek recovery on account of any and all other claims that she may have against the Debtors and/or their estates.

6. Except to the extent expressly set forth in paragraph 3 herein, the automatic stay of section 362(a) of the Bankruptcy Code shall remain in full force and effect for all other

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purposes. Nothing herein shall constitute or operate as a waiver or modification of the automatic stay so as to permit the prosecution against any of the Debtors of any claims by any person or entity other than the Claimant with respect to the Potential Claim, subject to the limitations set forth herein.

7. The agreement by the Debtors to the modification of the automatic stay on the terms and conditions set forth herein shall not be deemed an agreement by the Debtors to provide assistance or to cooperate with the Claimant in any way in her efforts to pursue coverage and/or a recovery in connection with the Potential Claim or to secure coverage and/or payment from the Insurance Policies, if any, on any settlement or judgment arising from the Potential Claim. The Claimant acknowledges that the Debtors, and their counsel, have not made any representations or warranties as to whether any of the Insurance Policies provide coverage or would otherwise provide payment related to the Potential Claim, and that any determination made by the Claimant as to the availability of coverage or payment from the Insurance Policies is made wholly on the basis of the Claimant's independent investigation. Nothing in this Stipulation shall provide a basis for or constitute a determination as to the availability or applicability of coverage or payment by the Insurance Policies or the Claimant's rights or entitlement to the proceeds of such Insurance Policies, nor shall this Stipulation be construed to be binding on the Debtors' insurers regarding the Insurance Policies and/or the Potential Claim.

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8. Nothing contained herein shall be deemed an admission of liability on the part of the Debtors with respect to the Potential Claim.

9. The Debtors and the claims agent are authorized to take any and all actions necessary to effectuate this Stipulation including, without limitation, amending the claims register in the chapter 11 cases to reflect the terms of this Stipulation.

10. This Stipulation is the entire agreement between the Debtors and the Claimant with respect to the subject matter hereof. This Stipulation supersedes any and all agreements, whether written or oral, that may have previously existed between the Parties with respect to the matters set forth herein. No statements, promises, or representations have been made by any Party to any other, or relied upon, and no consideration has been offered, promised, expected or held out other than as expressly provided for herein.

11. The Parties, by and through their undersigned counsel, each represent and warrant that the undersigned is fully authorized and empowered to execute and deliver this Stipulation on behalf of, and to bind, each Party, as applicable, to the terms and conditions of this Stipulation.

12. Each of the Parties further acknowledges that it has been fully advised with respect to its rights and obligations under this Stipulation by counsel of its own choosing. Each of the Parties has consulted with counsel of its own choosing and has had adequate opportunity to make whatever investigation or inquiry it deems necessary or desirable with respect to the subject matter and terms of this Stipulation.

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13. In the event of any ambiguity in this Stipulation, no inferences shall be drawn against any Party on the basis of authorship of this Stipulation.

14. This Stipulation shall be binding and inure to the benefit of the Parties hereto, their successors and assigns. Including without limitation, as to the Debtors, any chapter 7 or chapter 11 trustee, plan administrator or estate representative, and as to the Claimant, any executor, estate administrator or representative.

15. No modification, amendment or waiver of any of the terms or provisions of this Stipulation shall bind any Party unless such modification, amendment or waiver is in writing, has been approved by the Court, and has been executed by a duly authorized representative of the Party against whom such modification, amendment or waiver is sought to be enforced. If any part of this Stipulation is held to be unenforceable by any court of competent jurisdiction, the unenforceable provision shall be deemed amended to the least extent possible to render it enforceable and the remainder of this Stipulation shall remain in full force and effect.

16. This Stipulation shall be governed by and construed in accordance with the Bankruptcy Code and, where not inconsistent, the laws of the State of New Jersey, without regard to the conflict of laws principles thereof. This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective successors, assignees, agents, attorneys and representatives.

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17. This Stipulation may be executed in one or more counterparts, including by facsimile and/or electronic mail, each of which when so executed shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same Stipulation.

18. The Parties acknowledge and agree that the Court shall retain jurisdiction over all disputes concerning or related to the subject matter of this Stipulation.

Dated: August 24, 2020

AGREED AND STIPULATED TO:

**THE LAW OFFICE OF NATLIE G.
FIGGERS, LLC**
Counsel for Claimant

COLE SCHOTZ P.C.
Counsel for Debtors and Debtors-in-Possession

By: /s/ Natlie Figgers
Natlíe G. Figgers, Esq.
7501 Wiles Road, Suite 141
Coral Springs, FL 33067
Telephone (954) 906-5949
Facsimile (800) 450-3603

By: /s/ Ryan T. Jareck
Ryan T. Jareck, Esq.
Court Plaza North
25 Main Street
P. O. Box 800
Hackensack, NJ 07602-0800
Telephone (201) 489-3000
Facsimile (201) 489-1536